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Supreme Court, U.S.
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No. 97-568

In The
Supreme Court of The United States
October Term 1997

JOHN H. HAPGOOD,
Petitioner,

v.

CITY OF WARREN,
Respondent.

Appeal to the Supreme Court of Ohio
from the Eleventh Appellate District
Ohio Court of Appeals for Trumbull County

REPLY BRIEF TO RESPONDENT'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED FOR REVIEW

1. Whether an individual's state claim for retaliatory discharge arising from his or her filing of a state workers compensation claim is pre-empted by the federal Labor Management Relations Act concerning collective bargaining agreements.

LIST OF PARTIES TO THE PROCEEDINGS IN THE COURT BELOW

The caption of the case in this Court contains the names of all parties to the proceedings in the Ohio Supreme Court.

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NO.: 97-568

In the Supreme Court of the United States

October Term, 1996

JOHN H. HAPGOOD

Petitioner,

vs.

CITY OF WARREN

Respondent.

Appeal to United State Court of Appeals for the Sixth Circuit from the United States District Court for the Northern District of Ohio

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REPLY BRIEF TO RESPONDENT'S BRIEF IN OPPOSITION

OPINIONS BELOW

The March 12, 1997 decision of the Ohio Supreme Court, whose judgment herein is herein sought to be reviewed, was Case No.: 96-2729 decided on March 12, 1997 and is unreported, and is reprinted in the separate Appendix to this Petition, **App. A**. The prior opinion of the Eleventh Appellate District Ohio Court of Appeals, entered on October 28, 1996, was Case No.: 95-T-5355 decided on October 28, 1996.and is unreported, and is reprinted in the separate Appendix to this Petition, **App. B**. The prior opinion of the Court of Common Pleas for Trumbull County, Ohio, entered on October 13, 1995, was Case No.: 93-CV-1999, decided on October 13, 1995, and is unreported, and is reprinted in the separate Appendix to this Petition, **App. C**.

STATEMENT OF JURISDICTION

The judgment of the Ohio Supreme Court was entered on March 12, 1997. The jurisdiction of this Court is involved pursuant to 28 U.S.C. 1257.

CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, RULES AND REGULATIONS INVOLVED

This case involves 29 United States Code 185 (a), and Ohio Revised Code Section 4123.90.

STATEMENT OF THE CASE

Petitioner, John Hapgood was employed as a firefighter for the City of Warren in Trumbull County, Ohio, from March 30, 1992 until his discharge on December 7, 1993. During 1993, Petitioner filed and pursued a workers compensation claim arising from his employment with the City of Warren. Petitioner also filed the herein claim pursuant to the Americans with Disabilities Act, with the U.S. District Court for the Northern District of Ohio, Eastern Division.

The Respondent, City of Warren, moved for Summary Judgment based upon the doctrine of collateral estoppel as it pertained to Petitioner's related discharge proceeding before an arbitrator.

The Court granted Summary Judgment in favor of the Respondent, without hearing, based upon the doctrine of collateral estoppel.

SUMMARY OF THE ARGUMENT

Respondent, the City of Warren, argues that since petitioners state claim (based upon a state statute) for retaliatory discharge for filing a worker compensation claim, is barred by the doctrine of res judicata since petitioner's discharge was upheld in a binding Arbitration proceeding and that a state administrative agency found petitioner's discharge was with just cause, that now petitioner cannot pursue his statutory claim based upon the doctrine of res judicata.

Argument

In October of this year, the United States Supreme Court denied certiorari in the matter entitled **Pryner vs. Tractor Supply Co., Inc.** 927 F. Supp. 1140 (S.D. Ind. 1996). The United States District Court for the Southern District of Indiana, ruled that a:

> [G]rievance procedure in collective bargaining agreement was intended to vindicate employee's contractual rights, while Title VII and ADA created independent statutory right to be free from discrimination, distinctly separate nature of these contractual and statutory rights is not vitiated merely because both may have been violated as result of same factual occurrence, and no inconsistency results from permitting both rights to be enforced in their respectively appropriate forums.... [T]his recognizes one of the classic

differences between an individual employment contract between an employee and his or her employer and the contract created by a collective bargaining agreement.

While an individual may surrender any of his or her statutory rights unless Congress has expressed the intent that a particular right cannot be surrendered, in the context of a collective-bargaining agreement, the rights at issue are solely those articulated within the confines of the agreement itself. In other words, while an individual employment contract can address both contractual and statutory rights, a collective-bargaining agreement, by its nature, may only address the contractual rights of the members of the bargaining unit. "Thus the arbitrator has authority to resolve only questions of contractual rights, and this authority remains regardless of whether certain contractual rights are similar to, or duplicative of,

> the substantive rights secured by Title VII,".... [T]he Court's recognition of the dualism between the contractual rights governed by a collective-bargaining agreement and the statutory rights which flow to each individual within the collective bargaining unit is unchanged.....
>
> **Id.**

The U.S. Court of Appeals for the Seventh Circuit hold in **Pryner vs. Tractor Supply Co**., 109 F. 3d 354 (7th Cir. 1997), that a worker's statutory rights are arbitrable only if the worker consents to have them arbitrated; a union may not consent for a worker by signing a collective bargaining agreement that consigns the enforcement of statutory rights to a union controlled grievance and arbitration machinery created by said agreement. The U.S. Supreme Court denied certiorari on this case on October 15, 1997.

> [W]e are not holding the workers' statutory rights are never arbitrable. They are arbitrable if the

> worker consents to have them arbitrated. If the worker brings suit, the employer suggests that their dispute be arbitrated, the worker agrees, and the collective bargaining agreement does not preclude such side agreements, there is nothing to prevent a binding arbitration.... [A]ll we are holding is that the union cannot consent for the employee by signing a collective bargaining agreement that consigns the enforcement of statutory rights to the union controlled grievance and arbitration machinery created by the agreement.

In addition, this Court also held in **Alexander vs. Gardner-Denver Co.,** 415 U.S. 36 (1974) that arbitration of a contractual right not to be discriminated against does not preclude enforcement of a statutory right.

The Seventh Circuit also held **in EEOC vs. Board of Governors of State Colleges and Univs**., 957 F. 2d 424, 431, (7th

Cir.), cert. denied 506 U.S. 906 (1992), that "it is well established that unions cannot waive employees' ADEA or Title VII rights through collective bargaining."

In the instant case, the petitioner responds that Section 152 (2) of the LMRA, at 29 USC 152, as applied to the petitioner, is violative of the equal protection clause of the fourteenth amendment to the United States Constitution.

The fact that petitioner worked for a municipal corporation as opposed to a non-municipal corporation, should not be determinative to this case since it would result in petitioner being treated differently from other workers who seek to enforce statutory rights, both State and Federal, which are not expressly or impliedly pre-empted by the relevant collective bargaining agreement.

The rationale of Pryner, Supra, should apply to the instant case since there is no rational basis to Congress to distinguish workers employed in a municipal corporation from a non-municipal

corporation, denying said workers the equal protection of the law set forth in the L.M.R.A. of 1947.

The U.S. Constitution's guarantee of equal protection of the laws certainly raises a federal question with regards to the application of LMRA of 1947 to the case at bar.

Thus, the Pryner "doctrine" should be applied to the instant case.

CONCLUSION

WHEREFORE, for the foregoing reasons, petitioner respectfully prays that his writ be granted.

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